

# HOUSE BILL REPORT

## HB 2623

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**As Reported by House Committee On:**  
Judiciary  
General Government Appropriations

**Title:** An act relating to the foreclosure of residential real property.

**Brief Description:** Regulating the foreclosure of residential real property.

**Sponsors:** Representatives Orwall, Miloscia, Darneille, Kirby, Sullivan, Pettigrew, Simpson, Rolfes and Hasegawa.

**Brief History:**

**Committee Activity:**

Judiciary: 1/20/10, 2/1/10 [DPS];

General Government Appropriations: 2/5/10 [DP2S(w/o sub JUDI)].

**Brief Summary of Second Substitute Bill**

- Requires the Housing Finance Commission to review the effectiveness of the "meet and confer" requirement and report to the Legislature by November 30, 2010.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby and Ross.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Ormsby and Roberts.

**Staff:** Trudes Tango (786-7384).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A deed of trust is a type of security interest in real property. A deed of trust is essentially a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary).

Unlike mortgages, which require judicial foreclosure, deeds of trust may be non-judicially foreclosed if the borrower defaults on the loan obligation. To initiate foreclosure procedures the trustee must, among other things, file a notice of trustee's sale 90 days before the sale. The notice is recorded in the county auditor's office. A sale may not take place less than 190 days from the date of default.

Last year, the Legislature enacted Engrossed Senate Bill (ESB) 5810 which added a "meet and confer" requirement for deeds of trust made from January 1, 2003, to December 31, 2007, on owner-occupied residential property. Under ESB 5810, a beneficiary cannot issue a notice of default until 30 days after the beneficiary contacts the borrower to explore options for the borrower to avoid foreclosure. During this initial contact, the beneficiary must, among other things, give the borrower contact information for a U.S. Department of Housing and Urban Development (HUD)-certified counseling agency and other places that might be able to assist the borrower. This "meet and confer" requirement expires on December 31, 2012.

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#### **Summary of Substitute Bill:**

The Department of Financial Institutions (DFI) must conduct a review of the effectiveness of the "meet and confer" requirement and examine whether it has resulted in an increase in the number of loan modifications and whether additional statutory provisions, such as mandatory mediation, are necessary to produce effective communication between lenders and borrowers.

The DFI must also: (1) evaluate the feasibility of temporary foreclosure forbearance programs for certain borrowers; (2) review court claims, if any, that were brought to enjoin foreclosure based on legislative changes made to the foreclosure process; and (3) identify additional sources of funds for mortgage assistance.

The DFI must report its findings and recommendations back to the Legislature by November 30, 2010.

#### **Substitute Bill Compared to Original Bill:**

The original bill: (1) provided a one-year forbearance on foreclosure for a borrower receiving unemployment benefits; (2) required a trustee to pay a \$25 fee when recording a notice of sale; (3) repealed the expiration date of the statute requiring beneficiaries to contact borrowers before issuing a notice of default; and (4) expanded the application of that requirement to all deeds of trust, rather than only deeds of trust issued between 2003 and 2007.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support of proposed substitute) The economy is still struggling, there is record high unemployment, and a huge increase in foreclosures. People are having a difficult time navigating through the banking system. The role of the state is to help in these types of situations. The bill is meant to help families who have been in their homes for a long time. The bill will buy extra time for homeowners to catch up and for lenders to reach out. It will help stabilize neighborhoods. Homeowners who are being foreclosed now are those with good credit and who have long-standing histories of payments. Every foreclosure costs the public money. A forbearance should not cause the banks more disruption than a foreclosure does. Housing counselors need more resources. They help facilitate communication between the lender and borrower. Over 1,000 families could be helped by the appropriation in the proposed substitute for housing counselors.

(Opposed) The mechanism in the bill to connect unemployment with forbearance will have a grave effect on the stability of community banks and will impact the ability of lenders to give credit to consumers. This will have a chilling effect on the ability of lenders to make loans to first-time homebuyers. Most banks want to work with the homeowners and do not want to foreclose on homes. The bill will bring uncertainty to the current and future lending market. The bill would make a sale void if it violates the provision of the bill, and that would mean nobody can buy the home. A purchaser needs to know that they will get title to the property.

**Persons Testifying:** (In support of proposed substitute) Representative Orwall, prime sponsor; Velma Veloria, Homesight; Mark Ellenbrook, Seattle Office of Housing; Alex Kamaunu, Family Finance Resource Center; Kim Hermann, Washington State Housing Finance Commission; Dusty Hoerler, Gene Judevine, and Kevin Wilder, Washington Local 32; Nick Federici, Washington Low Income Housing Alliance; and Marnie Claywell, Parkview Services.

(Opposed) Brad Tower, Community Bankers of Washington; Mark Minickiello, Washington Credit Union League; Al Ralston, Boeing Employees Credit Union; James McMahan and Marianne Nichols, County Auditors; Denny Eliason, Washington Banker's Association; Greg Pierce, Washington Financial League and Washington Mortgage Lender's Association; and Dwight Bickel, Washington Land Title Association.

**Persons Signed In To Testify But Not Testifying:** None.

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**HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS**

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 13 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Blake, Dunshee, Hudgins, Kenney, Klippert, Pedersen, Sells, Short, Van De Wege and Williams.

**Staff:** Sara del Moral (786-7118).

**Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Judiciary:**

A review of the effectiveness of the "meet and confer" requirement must be conducted by the Housing Finance Commission, rather than by the Department of Financial Institutions. The requirement to examine other foreclosure issues is eliminated.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) One-third of the homes in the U.S. are occupied by people in "underwater" mortgages, where the owners owe more than the value of their homes. This bill helps people stay in their homes. This bill started out in an effort to change the foreclosure process in Washington. This bill helps continue the dialogue on the residential loan crisis.

(Opposed) None.

**Persons Testifying:** Nick Federici, Washington Low Income Housing Alliance.

**Persons Signed In To Testify But Not Testifying:** None.